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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19 SOUTHERN DIVISION

20 UNITED STATES OF AMERICA,) Case No. SA CR 15-038-JLS
)
21 Plaintiff,) <u>GOVERNMENT'S POSITION RE:</u>
) <u>SENTENCING FOR DEFENDANT</u>
22 v.) <u>OSWALDO DE JESUS MIRAMONTES-</u>
) <u>DIAZ</u>
23 OSWALDO DE JESUS MIRAMONTES-)
24 DIAZ, et al.,)
)
25 Defendants.)
)
)
)

26 Plaintiff United States of America, by and through its
27 counsel of record, the United States Attorney for the Central
28 District of California, hereby files its position re: sentencing
for defendant OSWALDO DE JESUS MIRAMONTES-DIAZ. The
government's response and position are based upon the attached

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1 Memorandum of Points and Authorities, the Presentence
2 Investigation Report, and the files and records in this case, as
3 well as any evidence or argument that the Court may wish to
4 consider at the hearing on this matter.

5 DATED: July 29, 2016

Respectfully submitted,

6 ARTHUR WYATT
7 Chief

8 ANDREA GOLDBARG
9 Deputy Chief

10 _____/s/_____
11 ANTHONY J. NARDOZZI
12 Trial Attorney

13 Attorneys for Plaintiff
14 United States of America
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background

On May 19, 2016, defendant OSWALDO DE JESUS MIRAMONTES-DIAZ ("defendant") pleaded guilty to count one of the indictment charging him with Conspiracy to Distribute over five kilograms of Cocaine, in violation of Title 21, United States Code, Section 846. (PSR ¶¶ 3-4.)¹ In the plea agreement, and at the change of plea hearing, defendant admitted to the following:

On or about August 30, 2013, defendant Oswaldo DeJesus Miramontes-Diaz conspired with co-defendant La Sean Louis West and others to possess with intent to distribute cocaine, a schedule II narcotic drug controlled substance. Defendant Miramontes-Diaz delivered cocaine to co-defendant West. Specifically, defendant Miramontes-Diaz met co-defendant West outside of an apartment building in Hollywood, California, within the Central District of California ("the building"). Defendant Miramontes-Diaz picked up co-defendant West in defendant Miramontes-Diaz's vehicle so that co-defendant West could allow defendant Miramontes-Diaz's vehicle's entry into the building's garage in order to deliver the approximately 48.7 kilograms of cocaine. Defendant was aware that he was delivering 48.7 kilograms of cocaine to a co-conspirator in an apartment within the building.

This apartment was later searched and law enforcement officers recovered approximately \$2.5 million in United States currency, a money counter, a digital scale with a white powdery substance, a heat sealer, cellophane, and several cellphones. (Plea Agreement at 6-7.)

¹ "PSR" refers to the Presentence Report prepared by the United States Probation Office.

1 II. The Presentence Report

2 The PSR calculates the base offense level as 32, pursuant
3 to U.S.S.G. §§ 2D1.1 and then applies a two-level reduction for
4 acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), as
5 well as an additional one-level reduction for assisting
6 authorities in the investigation of his own misconduct under
7 U.S.S.G. §§ 3E1.1(b) for a total offense level of 29. (PSR ¶¶
8 25, 34-36.) Therefore, the government believes that the total
9 offense level in this case should be 29. The defendant is also
10 facing a 120 month mandatory minimum sentence with a maximum
11 term of life in prison under 21 U.S.C. § 846 and 21 U.S.C. §
12 841(b)(1)(a).
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15 The PSR also calculates defendant's criminal history
16 category as I based on zero criminal history points. The
17 government has no objection to this calculation. With an
18 offense level of 29 and a criminal history category IV, the
19 applicable guidelines range should be 87-108 months. For the
20 reasons stated below, the government believes imposition of the
21 120 month mandatory minimum sentence is necessary and reasonable
22 in this case.
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25 III. Section 3553(a) Factors

26 The statutory factors under Title 18, United States Code,
27 Section 3553(a) as well as the 120 month mandatory minimum
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1 sentence with a maximum term of life in prison under 21 U.S.C.
2 § 846 and 21 U.S.C. § 841(b)(1)(a) warrant a sentence of 120
3 months imprisonment. Namely, the nature and circumstances of
4 the offense, as well as the history and characteristics of the
5 defendant, necessitate a sentence of 120 months imprisonment.
6

7 A. The Nature and Circumstances of the Offense

8 Title 18 U.S.C. § 3553(a)(1) states that the Court shall
9 consider the "nature and circumstances of the offense." The
10 conduct here supports a sentence of 120 months, followed by a
11 five-year term of Supervised Release.
12

13 On August 30, 2013 the defendant attempted to supply
14 nearly 50 kilograms of cocaine, a dangerous and destructive
15 street drug, in exchange for approximately \$2.5 million.
16 (Plea Agreement at 6-7.) Co-defendant, Laseasn Louis West,
17 was observed exiting an apartment building in Hollywood,
18 California ("the building") by law enforcement. (Exhibit A at
19 2.) Law enforcement observed the defendant meet with co-
20 defendant, West, outside of the building. (Exhibit A at 3.)
21 Law Enforcement observed co-defendant West enter the vehicle
22 of defendant Miramontes-Diaz, a Volvo XC-90 sport utility
23 vehicle with an open and visible rear storage area. (Exhibit
24 A at 3.) The vehicle proceeded towards the garage of the
25 building. (Exhibit A at 3). Co-defendant West facilitated
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1 entry of the vehicle by using a garage door opener to access
2 the building's garage. (Exhibit A at 3.)

3 Once in the building's garage, the defendant and co-
4 defendant West exited the vehicle. (Exhibit A at 3-4.) At
5 that time, the defendant and co-defendant West were stopped by
6 law enforcement. (Exhibit A at 3-4.) Upon questioning by law
7 enforcement, the defendant and co-defendant West denied
8 knowing one another despite being observed by law enforcement
9 officials in the same vehicle. (Exhibit A at 4.) Law
10 enforcement searched the rear storage area of the vehicle with
11 the consent of co-defendant West and two large cardboard boxes
12 consisting of 24 packages containing 48.7kg of cocaine were
13 recovered. (Exhibit A at 4.)

14 By speaking with building personnel, law enforcement
15 learned that the parking spots in the garage were assigned to
16 specific apartment units. (Exhibit A at 5.) Law enforcement
17 learned that the spot that the vehicle occupied by the co-
18 defendants was parked in was assigned to apartment # 1105.
19 (Exhibit A at 5.) Pursuant to a search warrant, apartment #
20 1105 was searched and approximately \$2.5 million in United
21 States currency, a money counter, a digital scale with a white
22 powdery substance, a heat sealer, cellophane, and several cell
23 phones were recovered. (Exhibit B and Exhibit C.)
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1 Defendant drove a car carrying close to 50 kilograms of
2 cocaine in the trunk, communicated with his co-defendant so
3 that he could access the building garage, and if not for the
4 interdiction by law enforcement, he would have exchanged the
5 significant quantity of cocaine for approximately \$2.5
6 million. Being entrusted with the transport of nearly 50kg of
7 cocaine and then, subsequently, approximately \$2.5 million
8 demonstrates the level of trust and experience the defendant
9 has within the overall drug distribution conspiracy.
10 Accordingly, it is clear that as the supplier of a large
11 amount of cocaine that was to be exchanged for a large amount
12 of money, the defendant's role in the instant offense is
13 integral.
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16 B. The History and Characteristics of the Defendant

17 Section 3553(a)(1) further states that the Court shall
18 consider the "history and characteristics of the defendant."
19 A review of defendant's criminal record reveals that he has a
20 troubling history of convictions beginning in 1994, when, at
21 the age of 20 he was convicted for minor in public premises,
22 and received 36 months of probation. (PSR ¶ 41.) Defendant,
23 at the age of 21 and while on probation for his first
24 conviction, was convicted of possession of marijuana for sale,
25 and received 180 days in jail and 36 months of probation.
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1 (PSR ¶ 42.) Two years later defendant would be arrested for
2 conspiracy to possess marijuana for sale, again on probation
3 and this time for his first drug related conviction. (PSR ¶
4 46.)

5 Defendant was arrested on drug charges again at the age of
6 35 for possession of marijuana for sale. (PSR ¶ 47.)

7 Defendant was found in a residence that was searched, which
8 resulted in finding 32 pounds of marijuana, around \$11,000 and
9 a counting machine. (PSR ¶ 47.) During the same
10 investigation, Defendant was found to have close to \$1,500
11 cash on him, while his residence was searched and \$90,000 and
12 a pay and owe ledger were found. (PSR ¶ 47.) Due to the
13 aforementioned convictions being outside the applicable time
14 period, they do not count toward defendant's criminal history
15 level. (PSR ¶¶ 41-47.) Regardless, the prior criminal
16 convictions and arrests attributed to defendant are factors to
17 be considered for sentencing purposes as it relates to the
18 defendant's history and personal characteristics. Based on his
19 criminal history and the instant offense, defendant still
20 poses a threat to the community at large. (PO Recommendation
21 at 4.)

22 The defendant has a criminal history consisting
23 exclusively of drug related convictions. The defendant's
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1 criminal history extends to additional drug arrests that did
2 not result in conviction. While none of the convictions or
3 arrests in this defendant's criminal history are comparable to
4 the instant offense, the defendant's continuous association
5 with drug distribution are troubling.

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7 C. Title 18 U.S.C. Section 3553(a)(2)

8 18 U.S.C. § 3553(a)(2) states that the Court shall
9 consider the need for the sentence "to reflect the seriousness
10 of the offense, to promote respect for the law, and to provide
11 just punishment for the offense; to afford adequate deterrence
12 to criminal conduct; and to protect the public from further
13 crimes of the defendant." The defendant has demonstrated his
14 inability to show respect for the law by engaging in the
15 instant criminal conduct. Thus, a sentence of 120 months
16 imprisonment, followed by a five-year term of Supervised
17 Release would adequately promote defendant's respect for the
18 law, something defendant has demonstrated she is lacking by
19 not only possessing controlled substances and distributing
20 them on the streets, but bringing them into a correctional
21 institution. Further, a sentence of 120 months imprisonment,
22 followed by a five-year term of Supervised Release would
23 provide just punishment and adequate deterrence for future
24 criminal conduct of defendant. Such a sentence is necessary
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1 to address defendant's criminal conduct and would impress upon
2 defendant respect for the law. Finally, the recommended
3 sentence provides general deterrence to other narcotics
4 traffickers by showing that their participation in narcotics
5 distribution will result in substantial sentences.

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7 IV. CONCLUSION

8 The government submits that a sentence including a 120
9 months term of imprisonment is sufficient, but not greater
10 than necessary, to punish defendant for his crime, promote
11 respect for the law, deter defendant and others from
12 committing similar crimes in the future, and protect the
13 public. The government therefore respectfully requests that
14 the Court impose a term of imprisonment of 120 months,
15 followed by a five-year term of Supervised Release.
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